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Attorneys for Petitioner

BY: RONALD D. COLEMAN, ESQUIRE
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

KERAPLAST TECHNOLOGY, Petitioner, vs. BATH AND KITCHEN DISTRIBUTORS, LLC, Respondent.	Civil Action: **PETITION TO CONFIRM FOREIGN ARBITRATION AWARD**

Petitioner KERAPLAST TECHNOLOGY ("Petitioner" or Keraplast") by and through its attorneys, DJK Counsel, LTD, respectfully alleges and states as its Petition against Respondent Bath and Kitchen Distributors, LLC ("Respondent" or "Bath and Kitchen") as follows:

INTRODUCTION

1. This action is for recognition and enforcement of a foreign arbitration award pursuant to Section 207 of the Federal Arbitration Act, 9 U.S.C. §207, in accordance with the

Convention of the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, 21 U.S.T. 2517, T.I.A.A. 6997, 330 U.N.T.S. 3 (the "New York Convention").

2. The arbitral award was rendered in favor of Petitioner and against Respondent on July 15, 2016, by an arbitral tribunal of three arbitrators seated in Kyiv City, Ukraine. A true and correct copy of the award is attached hereto as **Exhibit A**. A certified translation of the award is attached as **Exhibit B**.

THE PARTIES

3. Petitioner is a corporation organized and existing under the laws of the state of Germany. Petitioner's address is Voltastraße 10, 70376 Stuttgart, Germany

4. Respondent is a limited liability company organized and existing under the laws of the state of New Jersey. Its address is 157 Helen Street, South Plainfield, New Jersey, 07080.

JURISDICTION AND VENUE

5. The Court has original jurisdiction over this matter pursuant to 28 U.S.C. §1331 and 9 U.S.C. §201, *et seq.* because this is an action to enforce an arbitration awarded rendered in Ukraine and because the United States, Ukraine, and Germany are contracting states to the New York Convention. *See* 9 U.S.C. §202.

6. The Court has federal question jurisdiction over this action pursuant to 9 U.S.C. §203 because any action or proceeding falling under the New York Convention "shall be deemed to arise under the laws and treaties of the United States."

7. The Court has personal jurisdiction over Respondent pursuant to Rule 4(k)(1)(a) of the Federal Rules of Civil Procedure because it is a resident of the District of New Jersey and the therefore subject to the general jurisdiction in the state.

8. Venue is proper in this Court pursuant to 9 U.S.C. 204 because save for the arbitration agreement the action addressing the controversy between the parties could have been brought in this court.

AGREEMENT TO ARBITRATE

9. On May 23, 2014, the parties entered into a written agreement (hereafter, the "Agreement") for the sale of ceramic tile under which Petitioner would supply ceramic tile, Respondent would accept and make payment eighty-five (85) days after receipt. A copy of the Agreement is attached as **Exhibit C**.

10. Clause 6.2 of the Agreement provides that any dispute or controversies between the parties be settled amicably. In the face of failure to reach an amicable settlement, the disputes shall be finally settled by the International Commercial Arbitration Court of Chamber of Commerce of Industry of Ukraine.

11. In 2014, a dispute arose between the parties that was subject to the arbitration provision of the Agreement. The dispute involved Respondent's failure to pay the balance of $423,995.72 for ceramic tile delivered by Petitioner.

12. Petitioner made a demand on Respondent for the outstanding balance; however, no payments were made.

ARBITRATION PROCEEDINGS

13. Pursuant to the arbitration clause of the Agreement, on December 28, 2015, Petitioner sent a statement of claim to the International Commercial Arbitration Court of Chamber of Commerce and Industry of Ukraine ("ICAC of CCI of Ukraine") regarding the $423,995.72 debt owed by Respondent.

14. On February 3, 2016, the ICAC of CCI of Ukraine sent a copy of Petitioner's claim materials and the Regulations and List of Arbiters of ICAC of CCI of Ukraine, and further, a request for Respondent to provide revocation of the essence of the claim and the full name of the arbiter appointed by it within 30 days.

15. On March 1, 2016, Respondent provided a letter to the ICAC of CCI of Ukraine appointing an arbiter for the proceeding.

16. On May 11, 2016, Respondent failed to attend a meeting of the arbitral tribunal and the tribunal continued the proceeding until June 16, 2016, and the ICAC of CCI of Ukraine provided notice of the continued date to Respondent. On June 16, 2016, Respondent again failed to attend a meeting of the arbitral tribunal and the tribunal again continued the proceeding to July 15, 2016, and provided notice to Respondent.

17. On July 15, 2016, Petitioner presented the ICAC of CCI of Ukraine with a written statement that Respondent had paid USD$25,000 to Plaintiff on June 8, 2015, $24,984.67 on July 1, 2015, and $24,984.67 on October 15, 2015.

18. On July 15, 2016, a meeting of the arbitral tribunal was held. Although Respondent was duly notified of the date and time of the meeting, Respondent did not send a representative to that meeting. Further, having received the claim materials, Respondent did not send the revocation of the statement of claim to the ICAC of CCI of Ukraine, did not lodge any objections regarding Petitioner's claim, and did not deny the existence of debt under the Agreement.

19. On the same date, the arbitrators held a hearing and heard evidence and based upon the evidence made a final statement. The arbitrators issued the final Arbitral Award on July 15, 2016 (the "Award").

20. In the Award, the arbitral tribunal concluded that Respondent breached its obligation to Petitioner under the Agreement by failing to make payment for goods delivered by Petitioner.

21. Accordingly, the arbitral tribunal held that Respondent breached its obligation to pay the sum of USD $423,995,72 to Petitioner no later than December 27, 2014.

22. As a result of Respondent's breaches, the arbitral tribunal ordered Respondent to pay Petitioner the following amounts:

a. USD $349,026.38 as the amount of money owed by Respondent under the Agreement;

b. USD $11,216.30 as the amount of compensation for the arbitration fee and expenses.

23. On July 25, 2016, a copy of the Award was delivered to Respondent. On information and belief, a true and correct copy of the shipment receipt for the award is attached as **Exhibit D**.

24. To date, Respondent has failed to voluntarily satisfy the arbitration award since it was made. Therefore, judgment of the arbitration award is needed to permit Petitioner to enforce it.

25. Article III of the New York Convention provides that "[e]ach Contracting State shall recognize the arbitral award as binding . . ."

26. Pursuant to clause 6.2 of the Agreement, an arbitration award shall be final and binding upon both parties.

27. Respondent has not initiated proceedings seeking to set aside the Award or sought a stay of enforcement of proceedings while that action is pending, and no stay has been entered into by the Court of Appeal.

28. The Petition is timely as it is field within three years after the award was made pursuant to 9 U.S.C. §207.

29. Petitioner demands prejudgment interest of 0-3% pursuant to the Agreement from the date of the arbitration award to the date of the judgment, and post-judgment interest at the federal rate pursuant to 28 U.S.C. §1961 from the date of the judgment.

WHEREFORE, Petitioner respectfully requests that:

1. The Court make an Order confirming the arbitration award of the ICAC of CCI of Ukraine, as authorized by the New York Convention;

2. The Court enter judgment in the amount of USD $360,287.68; plus contractual prejudgment interest in the range of 0-3% in accordance with Section 4.2 of the Agreement and statutory post judgment interest at the federal rate, and costs;

3. Petitioner be awarded any and all further relief that the Court plus any and all relief that the Court deems just and proper.

ARCHER & GREINER
A Professional Corporation
Attorney for Petitioner

By: ______________________
RONALD D. COLEMAN

Dated: March 8, 2017

VERIFICATION PURSUANT TO N.J. CIV. R. 11.2

I, Eduard Gaimblat, am the CEO of Petitioner Keraplast Technology. Pursuant to 28 U.S.C. §1746, I declare (or certify, verify or state) under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Keraplast Technology GmbH
Voltastr. 10
70376 Stuttgart
– DE –
info@keraplast.eu
HRB 7210…

BY: ______________________________

CEO, Keraplast Technology

Dated: February 28, 2017